

REMARKS

I. Amendment to the Specification & the Claims

U.S. Patent No. 6,060,407 discloses, in Figures 1, 2 and 3 and lines 20-45 of Column 8, certain aspects of the present invention that at least one of the present inventors had shared on a confidential basis with the inventors of the '407 Patent. Therefore, the present invention is only related to the '407 Patent as it pertains to several aspects that had been shared on a confidential basis with the inventors of the '407 Patent but some of these aspects of the present invention were disclosed in the '407 Patent as unclaimed subject matter.

Upon entry of the foregoing amendment, twenty-eight (28) claims are pending in the application. Of the pending claims, six (6) claims are independent. Claim Nos. 21 and 22 have been amended to particularly distinguish the pre-stretched and stretched configurations of the primary members, including equivalents thereof, from one aspect of the present invention in which the integral strips maintains the pre-stretched configuration, including equivalents thereof.

II. Rejections under 35 U.S.C. § 103

The Examiner has rejected claims 1, 3, 4, 6-9, 15-21, 23 and 24 under 35 U.S.C. §103(a) as being unpatentable over the Skochdopole patent (6,060,407) in view of Le Caz (5,823,620). The Examiner has also rejected claims 2, 5, 10-14, 22, 25-28 under 35 U.S.C. §103(a) as being unpatentable over Skochdopole as applied to claim 1 above and further in view of Linder (5,582,463).

Applicant respectfully traverses each one of these rejections as improper because a *prima facie* case of obviousness has not been made for either of these combinations. In 1966, the Supreme Court set for the factual inquiries required to determine obviousness. *Graham v. John Deere*, 383 U.S. 1 (1966). To establish a *prima facie* case of obviousness, three basic criteria

must be met. First, there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine reference teachings. Second, there must be a reasonable expectation of success. Finally, the combined prior art references must teach or suggest all the claim limitations. The teaching or suggestion to make the claimed combination and the reasonable expectation of success must both be found in the prior art, not in the disclosure of the present invention. *In re Vaeck*, 947 F.2d 488, 20 USPQ2d 1438 (Fed. Cir. 1991). As discussed in detail below, the Examiner has failed to provide any support that the prior art references, or the knowledge generally available to one of ordinary skill in the art, provide any suggestion or motivation to modify the non-woven grid of Skochdopole with any actuation means or to use any type of attachment strip other than the disclosed integral larger strands or bands (34).

A. Claim Nos. 1, 11, 18-20, 22 & 27 – Non-Woven Grid with Actuator Means

With regard to the absence of an actuation means in Skochdopole, and the Examiner's rejection of claims 1, 11, 18-21 and 27 based on Skochdopole in view of the actuator system disclosed by Le Caz, the Examiner fails to provide any support in the prior art references that suggests or provides a motivation for changing a static installation of a non-woven grid into an actuated installation for the non-woven grid. Skochdopole teaches a static non-woven grid without any suggestion or motivation for a dynamic or otherwise actuated installation. Le Caz and the other prior art references that disclose actuated grids fail to provide any motivation that they can be used with a non-woven grid having integral attachment strips and also fail to suggest that they would be satisfactory for such a use. In fact, these prior art references teach away from the non-woven integral-strip grid of the present invention because even those references that

disclose an actuator system with a grid configuration explicitly disclose and further suggest the use of attachment devices that are not integral with the grid.

Additionally, when considered in its entirety, Skochdopole teaches away from the type of actuated support system that would result from either incorporating the non-woven grid of Skochdopole into Le Caz or incorporating the actuator system of Le Caz into Skochdopole. A prior art reference must be considered in its entirety, i.e., as a whole, including portions that would lead away from the claimed invention. *W.L. Gore & Associates, Inc. v. Garlock, Inc.*, 721 F.2d 1540, 220 USPQ 303 (Fed. Cir. 1983), *cert. denied*, 469 U.S. 851 (1984). References that teach away cannot serve to create a *prima facie* case of obviousness. *In re Gurley*, 27 F.3d 551, 553 (Fed. Cir. 1994).

Absent hindsight construction of the prior art references using the present invention, the combination of the Le Caz actuator system and the Skochdopole non-woven grid results in a non-woven grid which whose ends would be pivoted forward in the seat frame. This would necessarily cause the ends of the non-woven grid (i.e., at the connection point with the attachment strips) to slide against the seat back materials that are in contact with the non-woven grid, causing friction and resulting in abrasion of the non-woven grid and/or the seat back materials, depending on the relative hardness of each. However, Skochdopole specifically suggests that one of the advantages of the integral and substantially uniplanar grid is “reduced friction” which eliminates the susceptibility to “abrasion” (Column 7, lines 30-48). Accordingly, the design that results from the combination of Skochdopole in view of Le Caz is antithetical to the explicit advantages and motivation for the Skochdopole invention because it would increase the friction and the susceptibility to abrasion between the non-woven grid and the seat back materials. Therefore, Skochdopole teaches away from such a combination, and Skochdopole in

view of Le Caz fails to provide a *prima facie* case of obviousness that is necessary for a proper rejection of claims 1, 11, 18-21 and 27.

Additionally, there is also a significant question of whether the combination of Skochdopole in view of Le Caz would have a reasonable expectation of success given the explicit teaching of Skochdopole that its advantages include reduced friction and susceptibility to abrasion and the particular operation of the Le Caz device. Accordingly, Applicants submit that neither Skochdopole nor Le Caz provide the motivation (teach or suggest) for making the claimed combination or provide a reasonable expectation of success for the Skochdopole/Le Caz combination given the teaching of Skochdopole, and both the motivation and the reasonable expectation of success must be found in the prior art, not in the disclosure of the present invention. Therefore, for these additional reasons, Skochdopole in view of Le Caz also fails to provide a *prima facie* case of obviousness that is necessary for a proper rejection of claims 1, 11, 18-21 and 27.

As discussed above, Skochdopole teaches a static non-woven grid without any motivation, teaching or suggestion, for a dynamic or otherwise actuated installation. The prior art references that disclose an actuator system with a grid configuration also teach away from the non-woven integral-strip grid of the present invention because they explicitly disclose and further suggest the use of attachment devices that are not integral with the grid. Therefore, although the Examiner may attempt to use the present invention as a blueprint for hindsight construction from the prior art references, Applicants respectfully submit that these references fail to provide the motivation for or suggest the combination of the non-woven integral-strip grid with an actuator that is connected to the integral attachment strip. The Examiner's first attempt to use the present invention as such a blueprint, combining Le Caz and Skochdopole, fails to provide a *prima facie*

case of obviousness because, as discussed in detail above, neither Skochdopole nor Le Caz provide the motivation for making the claimed combination, Skochdopole teaches away from the Skochdopole/Le Caz combination, and neither Skochdopole nor Le Caz provide a reasonable expectation of success for either Skochdopole/Le Caz combination or the present invention.

As discussed above, Applicants have broadened claim 21 by eliminating the actuator element which has been added into claim 22. Applicants submit that although it may be possible to find prior art actuators that would work with the non-woven integral-strip grid, any such combination would be yet another attempt at hindsight construction based on the teachings of the present invention because, as discussed above, Skochdopole discloses a static non-woven grid and the other prior art references explicitly disclose attachment devices that are not integral with the grid. Accordingly, Applicants respectfully request that the Examiner reconsider these claims, including the claims depending therefrom, and withdraw the rejection of claims 1, 11, 18-20, 27 and 22 as currently amended.

B. Claim Nos. 7, 15 & 25 – Non-Woven Grid with Embedded Wire

With regard to the absence of any type of attachment strip other than the integral larger bands (34) of Skochdopole, and the Examiner's rejection of claims 7, 15 and 25 based on Skochdopole in view of the wire disclosed by Le Caz, Applicants respectfully submit that the wire (20) disclosed by Le Caz is not embedded in any type of attachment strip as claimed by the present invention. According to the present invention, fasteners attach the non-woven grid to the frame through the attachment strips and the wire is embedded in these attachment strips, but Le Caz does not embed a wire in an attachment strip of a non-woven grid. Instead, Le Caz discloses actuator (bowden cable 54) that is connected to cranks (34, 36) which operate on applicator pads

(26, 28) and specifically discloses that the cranks surround the “vertically extending axle section 42 of the wire(s) in the wire mesh 20.” (Column 3, lines 14-26)

To the extent that the Examiner considers these cranks to be attachment strips, Le Caz fails to suggest an embedded wire in the non-woven grid of Skochdopole because the wire of Le Caz is not embedded in the cranks. According to the teaching of Le Caz, the wire should either rotate within the crank or should grip multiple wires. Le Caz teaches away from attachment strips with an embedded wire because the cranks either have a “bearing surface 40” that permits “relative rotation between the cranks 34, 36 and the axle section 42 of the wire mesh 20” or the bearing surface “non-rotatably grips a pair of side-by-side wires” (Column 3, lines 26-38). Therefore, for the invention of Le Caz to work properly, the cranks must either rotate around a single wire or must grip the side-by-side wires, but neither of these disclosed embodiments provides any motivation or suggestion that wires are embedded in attachment strips.

References that teach away cannot serve to create a *prima facie* case of obviousness. *In re Gurley*, 27 F.3d 551, 553 (Fed. Cir. 1994). Therefore, Skochdopole in view of Le Caz fails to provide a *prima facie* case of obviousness that is necessary for a proper rejection of claims 7, 15 and 25. To properly combine the references, if possible, the Examiner should cite a reference that supports the conclusion that there is some motivation or suggestion to embed a wire into an attachment strip for a non-woven grid. Applicants respectfully submit that the rejection of these claims evidences the Examiner’s use of the present invention as a blueprint for hindsight construction from the prior art references. Accordingly, Applicants respectfully request that the Examiner reconsider claims 7, 15 and 25, including the claims depending therefrom, and withdraw the rejection of each of these claims.

C. Claim Nos. 2, 10 & 25 – Non-Woven Grid with Integral J-Strip

With regard to the absence of any type of attachment strip other than the integral larger bands (34) of Skochdopole, and the Examiner's rejection of claims 2, 10 and 25 based on Skochdopole in view of the J-strip disclosed by Linder, Applicants respectfully traverse the conclusion that there is any suggestion or motivation in the prior art to combine the teaching of Skochdopole in view of Linder. As discussed above, there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine reference teachings

Skochdopole fails to provide any suggestion or motivation to use a J-strip fastener and explicitly suggests that the integral "heavier and larger strands 33 and 34" that "uniplanarly merge" with the grid and are "advantageous" for mounting the elastomeric grid to the frame using fasteners, such as "staples and holding elements" (see Column 8, lines 28-45). As discussed above, a prior art reference must be considered in its entirety. Therefore, the suggestion to use uniplanar strands in Skochdopole would tend to lead others away from the use of J-strips which are not uniplanar.

Additionally, even if J-strips were to be incorporated into Skochdopole, there is no suggestion that the J-strips would be integral with the flat strands. Instead, Skochdopole and Linder would both tend to suggest that the J-strips would be attached to the flat strands, not integrally formed with the grid. Although Linder teaches the use of J-strip fasteners to connect a suspension mat to a frame, the J-strip fasteners are not integrally formed with the mat and must be attached thereto. Therefore, Skochdopole in view of Linder fails to provide a *prima facie* case of obviousness that is necessary for a proper rejection of claims 2, 10 and 25. To properly combine the references, if possible, the Examiner should cite a reference that supports the

conclusion that there is some motivation or suggestion to integrally form a J-strip fastener with a non-woven grid. Accordingly, Applicants respectfully request that the Examiner reconsider claims 2, 10 and 25, including the claims depending therefrom, and withdraw the rejection of each of these claims.

Even though there is no motivation in the prior art to combine Skochdopole in view of Linder, such a combination would fail to teach the present invention as set forth in claims 2, 10 and 25. According to the present invention, the J-strip fasteners are integrally formed with the substantially uniplaner, non-woven grid. The combination of Skochdopole and Linder would teach sewing, molding or otherwise attaching the J-strip fasteners onto a substantially uniplaner, non-woven grid. Therefore, as discussed below, applicant also submits that the prior art references fail to teach or suggest the present invention because even if there is the motivation to combine the references, it would take a hindsight construction using the present invention to integrally form the J-strip fasteners with the non-woven grid.

“Obviousness may not be established using hindsight or in view of the teachings or suggestions of the inventor.” *Para-Ordnance Mfg. v. SGS Importers Int’l.*, 73 F.3d 1085, 1087 (Fed. Cir. 1995). “The mere fact that the prior art could be so modified would not have made the modification obvious unless the prior art suggested the desirability of the modification.” *In re Gordon et al.*, 733 F.2d 900, 902 (Fed. Cir. 1984) (*citing Carl Schenck, A.G. v. Nortron Corp.*, 713 F.2d 782, 787 (Fed. Cir. 1983)). The support disclosed by Linder and other prior art woven support grids could not possibly have used an integral J-strip fastener with the support grid because the grid had to be made separately from the J-strip. Accordingly, the J-strip had to be attached to the support grid by some means other than being integrally formed therewith. As discussed above, Skochdopole fails to suggest any attachment strip other than the integral larger

strands (33, 34) that “uniplanarly merge” with the grid. Therefore, absent hindsight construction, there is no suggestion or motivation in the prior art to integrally form the J-strip fasteners with the non-woven grid, and any rejection of claims 2, 10 or 25 based on such hindsight construction is erroneous and should be withdrawn. For these reasons, as well as the reasons discussed above for Claim Nos. 1, 11, 18-20 & 27 and 7, 15 & 25, Applicants respectfully submit that the rejection of these claims provides additional evidence that the Examiner is using the present invention as a blueprint for hindsight construction from prior art references and is thereby violating the rules by which obviousness may be properly established.

D. Claim Nos. 23 and 25 – Non-Woven Grid with Pre-Stretched Grid Section

With regard to the absence of any type of attachment strip other than the integral larger and heavier strands (34) of Skochdopole and the Examiner’s rejection of claims 23 and 25 based on Skochdopole in view of Le Caz and Linder, Applicants respectfully submit that none of these references disclose or even suggest a pre-stretched border element that is an elastomeric grid section according to the claimed invention, i.e. having a plurality of primary members and points of intersection therebetween. In Skochdopole, the integral strands (33, 34) that “uniplanarly merge” with the non-woven grid are specifically disclosed as larger strands. Skochdopole does not disclose or otherwise suggest that a plurality of the unstretched smaller strands could be used for the attachment strip border. In fact, Skochdopole does not even disclose that the integral larger and heavier strands should remain in their pre-stretched configuration. Instead, although the non-woven grid with integral larger and heavier strands is disclosed by Skochdopole, it is an aspect of the present invention that the non-woven grid includes a pre-stretched, integral-strip that can be shaped in a number of configurations. Le Caz and Linder do not disclose or suggest any kind of a pre-stretched border element. Therefore, absent hindsight construction, there is no

suggestion or motivation in the prior art to integrally form the pre-stretched border element of the present invention with the non-woven grid, and any rejection of claims 23 or 25 based on such hindsight construction is erroneous and should be withdrawn.

III. Conclusion

For the reasons discussed above, Applicants respectfully submit that claims 1, 2, 7, 10, 11, 15, 18-20, 23, 25 and 27 are allowable over the prior art of record. Additionally for the reasons discussed above, amended claims 21 and 22 are also allowable over the prior art of record. For similar reasons, and for the additional reasons set forth above, Applicants urge that the claims depending from these claims are also allowable.

All of the stated grounds of rejection have been properly traversed, accommodated, or rendered moot. Applicant therefore respectfully requests that the Examiner reconsider all presently outstanding rejections and that they be withdrawn. It is believed that a full and complete response has been made to the outstanding Office Action, and as such, the present application is in condition for allowance. If the Examiner believes, for any reason, that personal communication will expedite prosecution of this application, he is invited to telephone the undersigned at the number provided.

Prompt and favorable consideration of this Amendment is respectfully requested.

Respectfully submitted,



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